

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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BELLSOUTH
TELECOMMUNICATIONS, LLC
d/b/a AT&T NORTH CAROLINA and
d/b/a AT&T SOUTH CAROLINA

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

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PSC SC
MAIL / DMS

Proceeding No.: 20-293

Bureau ID No.: EB-20-MD-004

DUKE ENERGY PROGRESS, LLC'S
FIRST SET OF INTERROGATORIES TO AT&T

Defendant Duke Energy Progress, LLC ("DEP"), pursuant to Rule 1.730, propounds the following interrogatories to Complainant BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina ("AT&T").

The information sought in each interrogatory is necessary to the resolution of this dispute because each interrogatory seeks information regarding (1) the accuracy or legitimacy of the allegations in AT&T's complaint, (2) cost and other data inputs relevant to ascertaining the just and reasonable rate for AT&T's use of DEP's poles, or (3) both. The information sought in each interrogatory is not presently available from any other source, as it is not obtainable from a public source, is within AT&T's sole possession, custody, or control, or is otherwise not available to DEP.

Definitions

1. “AT&T” means BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina and any persons associated with it, including, but not limited to, each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, attorneys, successors, predecessors, representatives, investigators, experts, employees, ex-employees, consultants, representatives and others who are in possession of, or who may have obtained, information for or on behalf of the above-mentioned persons or entities.

2. “Identify” means:

a. When referring to a person, the person’s full name, title, business address, e-mail address, and telephone number, and relationship to AT&T. If you do not know the person’s current information, provide the person’s last known business affiliation and title, business address and telephone number, residential address and telephone number, e-mail address, and relationship to AT&T.

b. When referring to a document, the type of document (*e.g.*, letter, memorandum, e-mail, etc.) or some other means of identification, its author(s) and addressee(s), its date, its subject, and all present locations by address and custodian.

c. When referring to an oral communication, the type of communication, the persons who participated in, heard, or witnessed it, the date of the communication, and the subject and substance of the communication, and identify any documents that set forth, summarize or refer to any portion of such oral communication.

d. When referring to a business organization, the corporate name or other names under which said organization does business and the location and phone number of its principal place of business.

e. When referring to data, the type of data, its vintage, the geographic location where the data was collected, the rules or guidelines governing its collection, and all facts, figures, measurements, and other data collected and analyses performed.

If any of the foregoing information requested is not known, the response shall indicate what of the foregoing information is not known.

3. “JUA” means the Amended and Restated Agreement Covering Joint Use of Poles between Carolina Power & Light Company (“DEP”) and BellSouth Telecommunications, Inc. (“AT&T”), dated October 20, 2000.

4. “Joint Use Agreement” means any agreement entered into by AT&T and any electric utility that grants each party access to the other’s distribution poles, including any amendments, exhibits, appendices, and operational guidelines, practices, or policies.

5. “You” and “your” have the same meaning as AT&T.

Instructions

1. In response to each interrogatory, first restate the interrogatory.

2. Provide all responsive information that is in the possession, custody or control of AT&T or any other person acting in the interest of, or on behalf of, AT&T. If AT&T does not have responsive information, or has information that is only partially responsive, AT&T should provide the available information and identify the information that is not available.

3. If any response contains any objection, state with specificity the grounds for the objection and the part of the interrogatory to which the objection is made but respond to the

interrogatory fully insofar as it is not deemed objectionable. If any information requested was, but is no longer, in your possession or subject to your control, or is no longer in existence, state whether it is missing or lost, destroyed, transmitted or transferred voluntarily or involuntarily to others, or otherwise disposed of and explain the circumstances surrounding the authorization for such disposition and the date or approximate date thereof.

4. These interrogatories are continuing, and AT&T must supplement its responses upon discovering or learning of additional information in its custody, possession, or control that was not produced or included in an earlier response.

Interrogatories

1. Upon execution of the JUA, did AT&T undertake any efforts to rearrange, reposition or otherwise modify its facilities attached to DEP's poles, or alternatively, has AT&T continued to utilize DEP's poles in more or less the same manner as AT&T utilized DEP's poles under the preceding joint use agreement? If AT&T undertook any efforts to rearrange, reposition or otherwise modify its facilities to DEP's poles upon execution of the JUA, please describe those efforts.

2. Does AT&T contend that Article XIII.C. of the JUA was (a) unjust or unreasonable at the time the JUA was executed, and/or (b) the result of unequal bargaining power between the parties? If so, please identify the basis for this contention, with reference to data, documents and communications between the parties. If any part of your answer relies on the parties' relative joint use pole ownership, please explain specifically how this relative pole ownership provided bargaining leverage to one party or the other at the time of the execution of the JUA. If AT&T contends that Article XIII.C. of the JUA was just and reasonable at the time the JUA was executed,

but subsequently became unjust and unreasonable, please identify the specific date on which AT&T contends Article XIII.C. of the JUA became unjust or unreasonable.

3. Identify all data in your possession, as it relates to poles jointly used by DEP and AT&T, concerning pole height, the average number of attaching entities, the number of attachments owned by AT&T, AT&T's attachment height on DEP poles, and the space occupied by DEP and AT&T on each party's poles. Include in your response when the data was compiled or collected, the entity or entities that compiled or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, and/or guidelines pursuant to which the data was collected.

4. If a CATV, CLEC or wireless provider occupies more than one foot of usable space on an AT&T pole, how does AT&T calculate the applicable per pole rate? If the answer differs based on the type of entity or from entity to entity, please describe those differences.

5. State the rates, terms, and conditions for of all pole attachment or pole license agreements that AT&T has with any cable television system or telecommunications carrier within North Carolina and South Carolina, and that were in effect at any time from January 1, 2017 forward. Include in your response the name of the entity that is the counterparty to each such agreement, the dates on which the agreement was in effect, the annual pole attachment rates thereunder, and the number of each party's attachments to AT&T poles. AT&T may, alternatively, respond to this interrogatory by producing copies of each such agreement, along with the applicable rates and attachment totals.

6. Please state whether AT&T or its currently retained contractors in DEP's service area have the training and equipment necessary to set AT&T joint use poles with DEP electric facilities attached to them, including the requisite training and equipment to work with or in close

proximity to live electrical facilities. If the answer is yes, please identify those contractors and state the number of poles per year since 2017 such contractors have set in energized lines and include within your answer the voltage class of such poles.

7. What size and type of pole(s) does AT&T set when such pole(s) will not be jointly used with DEP or another electric utility pursuant to a Joint Use Agreement? Please identify the costs incurred by AT&T in the preceding 5 years to construct non-joint use pole lines (including the cost of installing AT&T's communication facilities) and identify the total number of poles installed.

8. Please identify AT&T's average cost to replace a joint use pole (including AT&T's cost of transferring its facilities to the new pole) in 2019 and identify the number of poles replaced in 2019.

9. At any time prior to filing its complaint, did AT&T perform any calculations or analysis to determine whether the scheduled costs in Exhibit B of the JUA result in cost savings to AT&T and/or result in under-recovery by DEP of its actual costs? If so, please state the results of such calculations or analysis.

10. Of the approximately 148,000 DEP poles to which AT&T is currently attached, how many (if any) of those poles did AT&T pay to replace at the time AT&T made its initial attachment(s)?

Dated: November 13, 2020

Respectfully submitted,

/s/ Eric B. Langley
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020, a true and correct copy of Duke Energy Progress, LLC's First Set of Interrogatories to AT&T was filed with the Commission via ECFS and was served on the following (service method indicated):

Robert Vitanza Gary Phillips David Lawson AT&T SERVICES, INC. 1120 20th Street NW, Suite 1000 Washington, DC 20036 (by Federal Express)	Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 (by Federal Express and ECFS)
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Charlotte A. Mitchell, Chair North Carolina Utilities Commission 4325 Mail Service Center Raleigh, NC 27699-4300 (PUBLIC VERSION only by Federal Express)	Justin T. Williams, Chairman Public Service Commission of South Carolina 101 Executive Center Dr., Suite 100 Columbia, South Carolina 29210 (PUBLIC VERSION only by Federal Express)

/s/ Eric B. Langley
OF COUNSEL